

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRYAN E. ORSER,

Plaintiff,

V.

SELECT PORTFOLIO SERVICING, INC..

Defendant.

Case No. C05-1507RSL

ORDER PRELIMINARILY APPROVING
SETTLEMENT, PROVISIONALLY
APPROVING CLASS FOR SETTLEMENT
PURPOSES, SETTING FINAL FAIRNESS
HEARING, AND REQUIRING ONE
CHANGE TO THE PROPOSED CLASS
NOTICE

This matter having come before the Court on the motion of plaintiff Bryan E. Orser (“Orser”), individually and on behalf of a class of persons, for preliminary approval of a settlement reached between the Parties, and on consideration of the Parties’ Amended Settlement Agreement entered into as of March 2, 2009 (the “Settlement Agreement”) and the exhibits thereto, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Settlement Agreement is hereby incorporated by reference in this Order as if fully set forth herein. Capitalized terms in this Order shall, unless otherwise defined herein, have the same meaning as in the Settlement Agreement.

1 2. Solely for the purpose of settlement in accordance with the Settlement
2 Agreement, and pursuant to Fed. R. Civ. P. 23(a) and (b)(3) of the Federal Rules of Civil
3 Procedure, this Court hereby provisionally approves the following settlement class (“Settlement
4 Class”):

5 6. All persons, excepting only Curry Settlement Class Members, who, during the
7 period from July 28, 1999 to September 1, 2008, paid a Payoff Statement Fee
8 and/or Recording Fee to Select Portfolio Servicing, Inc. (f/k/a Fairbanks Capital
9 Corp.) in connection with a Loan secured by real property located in the State of
10 Washington.

11 If, for any reason, the Settlement is not approved or does not become effective, this provisional
12 approval shall be null and void, and shall not be used or referred to for any purpose in this
13 Action or any other action or proceeding.

14 7. For settlement purposes only, and subject to further consideration at the Court
15 Approval Hearing described in paragraph 13 below, the Settlement Class is provisionally found
16 to meet the relevant requirements of Fed. R. Civ. P. 23(a) and (b)(3).

17 8. For settlement purposes only, and after considering the relevant factors in Fed. R.
18 Civ. P. 23, Representative Plaintiff is conditionally designated as representative of the
19 Settlement Class and Class Counsel are conditionally appointed as counsel for the Settlement
20 Class. The law firms and attorneys conditionally representing the Settlement Class are:

21 Rob Williamson
22 WILLIAMSON & WILLIAMS
23 187 Parfitt Way S.W., Suite 250
24 Bainbridge Island, WA 98110
25 206.780.4447 Telephone
26 206.780.5557 Facsimile

27 29. Mark A. Griffin
28 KELLER ROHRBACK LLP
30 1201 Third Avenue, Suite 3200

1 Seattle, Washington 98101
2 206.623.1900 Telephone
3 206.623.3384 Facsimile

4 Guy W. Beckett
5 BECKETT LAW OFFICES, PLLC
6 1708 Bellevue Avenue
7 Seattle, Washington 98122
206.264.8135 Telephone
206.264.8144 Facsimile

8 5. Pursuant to Fed. R. Civ. P. 23, the terms of the Settlement Agreement, and the
9 Settlement provided for therein, are preliminarily approved as (a) fair, reasonable, and adequate
10 in light of the relevant factual, legal, practical and procedural considerations of the Action, (b)
11 free of collusion to the detriment of Class Members, and (c) within the range of possible final
12 judicial approval, subject to further consideration thereof at the Court Approval Hearing
13 described at paragraph 13 of this Order. Accordingly, the Settlement Agreement and the
14 Settlement are sufficient to warrant notice thereof, as set forth below, and a full hearing on the
15 Settlement.

16 6. Pursuant to the terms of the Settlement Agreement, Defendant is hereby directed
17 to prepare the Class Member List. Within forty-five (45) days of the Preliminary Approval Date,
18 and pursuant to the procedures detailed in the Settlement Agreement, Defendant shall cause the
19 Settlement Administrator to provide notice of the Settlement and of the Court Approval Hearing
20 to each Class Member on the Class Member List by mailing to the address for the Class Member
21 on the Class Member List a copy of the Class Notice, substantially in the form attached to the
22 Settlement Agreement as Exhibit B, together with a copy of the Claim Form, substantially in the
23 form attached to the Settlement Agreement as Exhibit C. The Settlement Administrator shall
24 have discretion to format the Class Notice and Claim Form in a reasonable manner to minimize
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1 mailing or administration costs.

2 7. If any Class Notice mailed pursuant to the Settlement Agreement and paragraph 6
3 above is returned by the United States Postal Service as undeliverable, then the Settlement
4 Administrator shall re-mail the Class Notice, together with the Claim Form, to the forwarding
5 address, if any, provided on the face of the returned mail. If the returned mail does not reflect a
6 forwarding address, then the Settlement Administrator shall have no other obligation to re-mail
7 the Class Notice and Claim Form, except as otherwise provided in the Settlement Agreement.

8 8. The Court finds that the Settlement Agreement's plan for class notice is the best
9 notice practicable under the circumstances and satisfies the requirements of due process and Fed.
10 R. Civ. P. 23. That plan is approved and accepted. This Court further finds that the Class Notice
11 and Claim Form comply with Fed. R. Civ. P. 23 and are appropriate as part of the notice plan
12 and the Settlement, and thus they are hereby approved and adopted, except that counsel must
13 make a change to the Class Notice.¹ The last sentence of Section VII.A. must be amended to add
14 "unless you opt-out pursuant to subsection B." Therefore, the last sentence of Section VII.A will
15 read, "If you do not mail back a fully-completed Claim Form before that deadline, you will not
16 get a Settlement Benefit and will be bound by the Settlement unless you opt-out pursuant to
17 subsection B."

18 This Court further finds that no other notice other than that identified in the Settlement
19 Agreement is reasonably necessary in the Action.

20 9. Any Class Member who wishes to be excluded from the Settlement Class and not

21 ¹ The Court assumes that the dates in Section XII of the Notice will be placed in
22 chronological order to minimize confusion.

1 be bound by the Settlement Agreement must complete and mail or hand-deliver a request for
2 exclusion (“Opt-Out”) to the Settlement Administrator postmarked no later than August 19,
3 2009. For a Class Member’s Opt-Out to be valid, it must be timely (as judged by the postmark
4 deadline set forth above) and (a) state the Class Member’s full name, address and telephone
5 number; (b) contain the property address which secured the Loan as to which the Class Member
6 seeks exclusion; (c) contain the Class Member’s personal and original signature(s) or the original
7 signature of a person previously authorized by law, such as a trustee, guardian, or person acting
8 under power of attorney, to act on behalf of the Class Member with respect to a claim or right
9 such as those in the Action (*i.e.*, conformed, reproduced, facsimile, or other non-original
10 signatures are not valid); and (d) unequivocally state the Class Member’s intent to be excluded
11 from the Settlement Class, to be excluded from the Settlement, not to participate in the
12 Settlement, and/or to waive all right to the benefits of the Settlement. In those cases where a
13 Class Member includes persons who were obligors on the same Loan, the Class Member shall be
14 deemed a Successful Opt-Out as to that Loan only if all obligors as to that Loan elect to and
15 validly opt-out in accordance with this Order and the terms of the Agreement. Any Class
16 Member who does not submit a timely Opt-Out, or otherwise comply with all requirements for
17 opting out as are contained in this Order, the Agreement and the Class Notice, shall be bound by
18 the Settlement Agreement, including the Release, as embodied in paragraphs 4.01 and 4.02 of
19 the Settlement Agreement, and any Final Judgment entered in the Action. Further, any Class
20 Member who is a Successful Opt-Out will be deemed to have waived any rights or benefits
21 under the Settlement and will not have standing to object to the Settlement.

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30 10. On or before September 4, 2009, Class Counsel, Counsel for the Defendant, and

1 the Settlement Administrator shall create and file with the Court under seal a comprehensive list
2 which will include full names and addresses of Successful Opt-Outs. The list shall be maintained
3 by this Court and the Clerk under seal in order to protect the privacy interests of those persons
4 identified thereon.

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6 11. Any Class Member who is not a Successful Opt-Out and who wishes to object to
7 the Settlement, in whole or in part, must mail or hand-deliver a written objection to the
8 Settlement or Settlement Agreement (“Objection”) with the Court, and contemporaneously mail
9 or hand-deliver it to Class Counsel and Counsel for the Defendant, no later than August 19,
10 2009. To be considered valid, each Objection must be timely (as judged by the filing deadline set
11 forth above) and (a) set forth the Class Member’s full name, current address, and telephone
12 number; (b) contain the address of the property that secured the Loan in connection with which a
13 Payoff Statement and/or Recording Fee was paid by the Class Member; (c) contain the Class
14 Member’s personal and original signature(s) or the original signature of a person previously
15 authorized by law, such as a trustee, guardian, or person acting under power of attorney, to act
16 on behalf of the Class Member with respect to a claim or right such as those in the Action (*i.e.*,
17 conformed, reproduced, facsimile, or other non-original signatures are not valid); (d) state that
18 the Class Member objects to the Settlement, in whole or in part; (e) set forth a statement of the
19 legal and factual basis for the Objection; and (f) provide copies of any evidence or documents
20 that the Class Member wishes to submit in support of his/her objection(s). Any Class Member
21 who does not submit a timely and valid Objection in complete accordance with this Order, the
22 Class Notice and the Settlement Agreement may not be treated as having filed a valid Objection
23 to the Settlement. Objections that are untimely and/or otherwise invalid may not be considered
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1 by this Court.

2 12. Within ten days of the date of this Order, defendant must mail a copy of this
3 Order to the appropriate officials as required by 28 U.S.C. § 1715(b). All filings, objections,
4 statements, or other submissions by any party or government entity noticed pursuant to 28
5 U.S.C. § 1715, or that claims an entitlement to have been noticed under 28 U.S.C. § 1715, shall
6 be filed with the Court, and contemporaneously mailed or hand-delivered upon Class Counsel
7 and Counsel for the Defendant, within ten days after they are received and no later than August
8 31, 2009.

9 13. A hearing (the “Court Approval Hearing”) shall be held before the undersigned at
10 8:30 a.m. on September 9, 2009, in the United States District Court for the Western District of
11 Washington, 700 Stewart Street, Courtroom 15106, Seattle, Washington, to determine, among
12 other things, (a) whether the proposed Settlement should be approved as fair, reasonable and
13 adequate, (b) whether the Action should be dismissed with prejudice pursuant to the terms of the
14 Settlement Agreement, (c) whether Class Members should be bound by the Release set forth in
15 the Settlement Agreement, (d) whether Class Members should be subject to a permanent
16 injunction that, among other things, bars Class Members from filing, commencing, prosecuting,
17 intervening in, or participating in (as class members or otherwise), any lawsuit, claim, demand or
18 proceeding in any jurisdiction that is based on or related to, directly or indirectly, matters within
19 the scope of the Release, (e) whether the Settlement Class should be finally certified, (f) the
20 amount of attorney’s fees and costs to be awarded to Class Counsel, if any, and (g) the amount of
21 the award to be awarded to Plaintiff for his service as class representative, if any. This hearing
22 may be postponed, adjourned, or continued by order of the Court without further written notice
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1 to the Settlement Class.

2 14. Memoranda in support of the Settlement, applications for an Attorney Fee Award,
3 applications for a Litigation Cost Award, and applications for a Representative Plaintiff Award
4 to Representative Plaintiff shall be filed with the Court no later than seven (7) days before the
5 Court Approval Hearing. Plaintiff's memorandum must include the number of Class Members
6 who have returned claim forms and the approximate aggregate amount of Payoff Statement Fees
7 paid by those Class Members to defendant.

8 15. Any Class Member, as well as any party or government entity noticed pursuant to
9 28 U.S.C. § 1715 (or that claims an entitlement to have been noticed under 28 U.S.C. § 1715),
10 who wishes to appear at the Court Approval Hearing, whether *pro se* or through counsel, must
11 file a notice of appearance in the Action, and contemporaneously serve the notice on Class
12 Counsel and Counsel for the Defendant, on or before August 19, 2009. No Class Member shall
13 be permitted to raise matters at the Court Approval Hearing that the Class Member could have
14 raised in an Objection, but failed to raise. Further, except by leave of the Court, no party or
15 government entity noticed pursuant to 28 U.S.C. § 1715 (or that claims an entitlement to have
16 been noticed under 28 U.S.C. § 1715) shall be permitted to raise matters at the Court Approval
17 Hearing that the party or government entity could have raised in a statement or other submission,
18 but failed to raise.

19 16. Any Class Member who wishes to intervene in the Action or seek other relief
20 from the Court must file with the Court, and contemporaneously mail or hand-deliver to Class
21 Counsel and Counsel for the Defendant, an appropriate motion or application, together with all
22 supporting pleadings or documentation, on or before August 19, 2009.

1 17. The postmark deadline for the submission of Valid Claim Forms shall be July 31,
2 2009. The validity of Claim Forms otherwise shall be governed by the terms stated in the
3 Settlement Agreement.

5 18. All other events contemplated by the Settlement Agreement to occur after this
6 Order and before the Court Approval Hearing shall be governed by the Settlement Agreement, to
7 the extent not inconsistent herewith.

9 19. Defendant and Counsel for the Defendant are hereby authorized: (a) to establish
10 the means necessary to administer the Settlement; and (b) to retain a settlement administrator to
11 assist in effectuating the terms of, and administering, the Settlement. This Court hereby
12 authorizes and appoints Tilghman & Co. to serve as Settlement Administrator in the Action.

14 20. All proceedings in the Action, other than such as may be necessary to carry out
15 the terms and conditions of the Settlement Agreement or the responsibilities related or incidental
16 thereto, are stayed and suspended until further order of this Court.

19 21. If Final Approval of the Settlement is not achieved, or if the Settlement is
20 terminated for any reason, the Settlement and all proceedings had in connection therewith shall
21 be without prejudice to the status quo ante rights of the parties to the Action, and all Orders
22 issued pursuant to the Settlement may be vacated upon a motion or stipulation from the parties.
23 In such an event, the Settlement and all negotiations concerning it shall not be used or referred to
24 in these Action for any purpose whatsoever. This Order shall be of no force or effect if Final
25 Approval does not occur for any reason, and nothing in this Order shall be construed or used as
26 an admission, concession, or declaration by or against Defendant, of any fault, wrongdoing,
27 breach, or liability. Nor shall this Order be construed by or against Representative Plaintiff or
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1 the Class Members that their claims lack merit or that the relief requested in these Action is
2 inappropriate, improper, or unavailable, or as a waiver by any Party of any defenses it may have.
3 Nor shall this Order be construed or used to show that certification of one or more classes would
4 or would not be appropriate if the Action were to be litigated rather than settled.

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6 22. Neither the Settlement nor the Settlement Agreement constitutes an admission,
7 concession, or indication by the Parties of the validity of any claims or defenses in the Action or
8 of any wrongdoing, liability, or violation of law by the Defendant, which vigorously denies all of
9 the claims and allegations raised in the Action.
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12 23. The Court reserves the right to approve the Settlement with such modifications, if
13 any, as may be agreed to by Class Counsel and Counsel for the Defendant and without future to
14 notice to the Class Members.
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16 24. Except as set forth in this Order and the Settlement Agreement, the Parties (and
17 Plaintiffs' Counsel and Counsel for the Defendant) shall not issue or cause to be issued any
18 public, mass, or generalized communications about the Settlement (other than disclosures
19 required by law), whether by press release, advertisements, Internet postings, or any other means
20 or media, without prior approval of the Court and/or the express written consent of the other
21 Party.
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24 Dated: April 14th, 2009
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28 Robert S. Lasnik
29 United States District Judge
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